BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MICHAEL HIRSCH TOLWIN, M.D. Physician's and Surgeon's Certificate No. G 48816 Respondent	)	Case No. 800-2014-009168

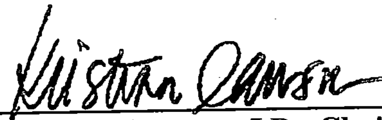
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on December 14, 2018.

IT IS SO ORDERED: November 16, 2018.

MEDICAL BOARD OF CALIFORNIA



Kristina D. Lawson, J.D., Chair
Panel B

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 800-2014-009168
MICHAEL HIRSCH TOLWIN, M.D. **P.O. Box 34841** **Los Angeles, CA 90034**	OAH No. 2018040880
Physician's and Surgeon's Certificate No. G 48816,	**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**
Respondent.	

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Vladimir Shalkevich, Deputy Attorney General.

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2. Respondent MICHAEL HIRSCH TOLWIN, M.D. (Respondent) is represented in this proceeding by attorney Carolyn Lindholm, whose address is: Bonnie, Bridges, Mueller, O'Keefe & Nichols, 355 South Grand Avenue, Suite 1750, Los Angeles, California 90071.

3. On or about August 30, 1982, the Board issued Physician's and Surgeon's Certificate No. G 48816 to MICHAEL HIRSCH TOLWIN, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2014-009168, and will expire on July 31, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2014-009168 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 25, 2017. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2014-009168 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2014-009168. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2014-009168, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

12. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 800-2014-009168 shall be deemed true, correct and fully admitted by respondent for purposes of that proceeding or any other licensing proceeding involving respondent in the State of California.

CONTINGENCY

13. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 48816 issued to Respondent MICHAEL HIRSCH TOLWIN, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and address of the patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

2. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course

not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than

15 calendar days after the effective date of the Decision, whichever is later.

4. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices

are within the standards of practice of medicine and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

6. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and

advanced practice nurses, except Respondent is not prohibited from supervising advanced practice nurses at (1) licensed board and care homes; (2) licensed convalescent facilities; and (3) hospitals.

7. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

8. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

9. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

10. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

1 Respondent's period of non-practice while on probation shall not exceed two (2) years.
2 Periods of non-practice will not apply to the reduction of the probationary term.
3 Periods of non-practice for a Respondent residing outside of California will relieve
4 Respondent of the responsibility to comply with the probationary terms and conditions with the
5 exception of this condition and the following terms and conditions of probation: Obey All Laws;
6 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
7 Controlled Substances; and Biological Fluid Testing.
8 12. COMPLETION OF PROBATION. Respondent shall comply with all financial
9 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
10 completion of probation. Upon successful completion of probation, Respondent's certificate shall
11 be fully restored.
12 13. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
13 of probation is a violation of probation. If Respondent violates probation in any respect, the
14 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
15 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke
16 Probation, or an Interim Suspension Order is filed against Respondent during probation, the
17 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall
18 be extended until the matter is final.
19 14. LICENSE SURRENDER. Following the effective date of this Decision, if
20 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
21 the terms and conditions of probation, Respondent may request to surrender his or her license.
22 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
23 determining whether or not to grant the request, or to take any other action deemed appropriate
24 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
25 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
26 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
27 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
28 application shall be treated as a petition for reinstatement of a revoked certificate.

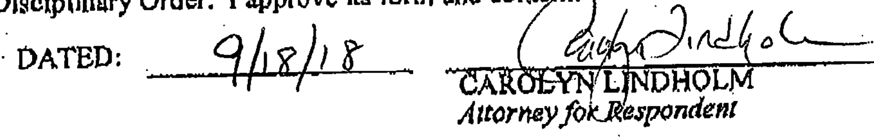
15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Carolyn Lindholm. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 9/18/18 MICHAEL HIRSCH TOLWIN, M.D.
Respondent

I have read and fully discussed with Respondent MICHAEL HIRSCH TOLWIN, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.



DATED: 9/18/18 CAROLYN LINDHOLM
Attorney for Respondent

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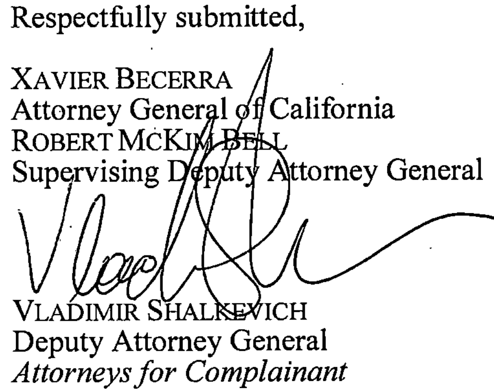
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 9/18/18

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General



VLADIMIR SHALKEVICH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2014-009168

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Oct. 25, 2017
BY: [signature] ANALYST

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:	Case No. 800-2014-009168
MICHAEL HIRSCH TOLWIN, M.D.	**ACCUSATION**
Post Office Box 34841 Los Angeles, California 90034	
Physician's and Surgeon's Certificate G 48816,	
Respondent.	

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California (Board).

2. On August 30, 1982, the Board issued Physician's and Surgeon's Certificate number G 48816 to Michael Hirsch Tolwin, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2018, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code, in pertinent part, provides:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

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6. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence – Patients J.M. & D.C.)

7. Respondent Michael Hirsch Tolwin, M.D. is subject to disciplinary action under Code sections 2234, subdivisions (a) and (b), in that he committed gross negligence in his care and treatment of Patients J.M. and D.C.[1] The circumstances are as follows:

8. Respondent is a psychiatrist, specializing in treating the chronically mentally ill. Since 1986, he has run and served as the president of an inpatient and outpatient psychiatric practice, the Tolwin Psychiatric Medical Group, Inc., located in Culver City, California. Respondent has also had staff privileges at several area hospitals, where he provided inpatient psychiatric services.

9. The applicable standard of care requires that psychiatrists perform an appropriate and good faith face-to-face evaluation that includes a mental status examination. The psychiatric evaluation may be augmented by testing, such as serology testing, to rule out any metabolic etiologies to the patient's complaints, or psychological testing to help quantify or detect the patient's symptoms.

10. The standard of care for offering mental health treatment is to provide a good faith evaluation so that a proper assessment and a differential diagnosis can be determined. The type of treatment varies depending on the mental health diagnosis. The response to treatment typically requires prospective evaluation, and with this prospective evaluation, treatment can be changed depending on the response. Also, the standard of care for mental health treatment is to inform the patient of the risks and benefits of the treatment.

11. The standard of care for psychiatric practice is to maintain accurate and complete medical records for patients. Specifically, psychiatric records should document an assessment,

[1] All patient references in this Accusation are by initials only. The true names are known to Respondent and will be disclosed to Respondent upon his timely request for discovery.

the basis for the assessment, treatment options offered, and response to treatment. Ideally, these records should be legible if handwritten, but it is understood within the standard of care that many physicians typically have poor handwriting, and if the handwriting is illegible to those other than the physician, a typed summary of care can be generated by the physician to make the records understandable.

Patient J.M.

12. Patient J.M. first presented to Respondent on May 1, 2014 at Respondent's Culver City office. At the time, J.M. was a 21-year-old male who reported a history of bipolar disorder and Hodgkin's lymphoma. At his initial evaluation, Respondent documented that, on multiple occasions, J.M. had been hospitalized, psychiatrically, most recently in 2013. J.M. was also noted to have a history of suicide attempts, including by overdosing. Respondent documented that J.M. was taking the following prescription medications: Seroquel (an antipsychotic), Ambien (a hypnotic sleep aid) and Xanax (a benzodiazepine). Respondent diagnosed J.M. with bipolar depression.

13. After this first visit and initial assessment, Respondent saw J.M. on an approximately monthly basis until February of 2017, except during a one-year gap between September of 2015 and 2016 when J.M. was incarcerated. Respondent noted that while incarcerated, J.M. again attempted suicide. Respondent re-assessed J.M. after this gap in treatment and again diagnosed J.M. with bipolar depression.

14. During his course of treatment with Respondent, J.M.'s complaints varied from feeling manic, suffering from severe anxiety and panic, feeling self-destructive and feeling that he suffered from Attention Deficit Hyperactivity Disorder (ADHD).

15. During the course of J.M.'s treatment, Respondent repeatedly and frequently prescribed J.M. numerous controlled substances, including Xanax, Ambien, Seroquel, Klonopin (a benzodiazepine), Viagra (for erectile dysfunction), Latuda (an anti-depressant), Cogentin (a benzotropine), Subutex (an opioid), Adderall (an amphetamine) and Remeron (an anti-depressant).

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16. In April 2014, Respondent noted that J.M. reported that he was residing in a sober living home.

17. In February 2015, Respondent began to prescribe Adderall to Patient J.M., despite being aware that J.M. was a possible drug seeker with substance abuse issues. Adderall is a stimulant medication (amphetamine) that can trigger mania in patients suffering from bipolar disorder, and can be abused by patients who suffer from addiction. J.M. suffered from both bipolar disorder and addiction.

18. In April 2015, J.M. reported to Respondent that he had been using heroin intravenously, had tried unsuccessfully to stop and had gone to several detox centers. Respondent noted that J.M. had needle track marks on his hands and arms. J.M. requested Suboxone (a medication used to treat opiate addiction that is a combination of buprenorphine (an opioid) and naloxone (a medication that blocks the effect of opioid medication). Instead, Respondent prescribed Subutex, a substitution treatment for opioid addiction that also contains buprenorphine.

19. In November 2016, three months after J.M. was released from prison, Respondent noted that J.M. was in a drug treatment program with strong urges to use heroin. Respondent again prescribed Subutex.

20. Despite being informed by Patient J.M. that he had been using heroin and had substance abuse issues, Respondent continued to prescribe Adderall to J.M.

21. During the course of J.M.'s treatment, Respondent failed to properly assess and provide an appropriate psychiatric evaluation of J.M., such that the proper diagnosis and treatment could be determined. This failure constitutes an extreme departure from the standard of care. Specifically,

A. At the initial evaluation, Respondent did not document how J.M.'s physical conditions, such as lymphoma, could be affecting his mental health.

B. In prospectively evaluating J.M., Respondent consistently failed to consider J.M.'s potential for addiction. From Respondent's records, it is clear that J.M. demonstrated numerous behaviors associated with addiction, including admitting to using heroin and to being in a drug treatment program. In his care and treatment of J.M., Respondent failed to consider how

J.M.'s substance abuse problems could be influencing symptoms that might be mistakenly interpreted as bipolar disorder.

C. Respondent failed to take adequate measures to diagnose J.M. with ADHD and instead prescribed a stimulant, Adderall, which can be abused by patients who have a history of addiction. ADHD is a childhood disorder that can persist into adulthood. Respondent diagnosed J.M. with ADHD without documenting a childhood history of ADHD. Treating patients with bipolar disorder and addiction problems with medications such as Adderall can be dangerous.

D. Throughout his evaluation and care of J.M., Respondent never ordered a urine drug screen. When prescribing benzodiazepines to an admitted opiate addict, screenings must be done as the interactions between benzodiazepines and opiates can be lethal.

22. During the course of J.M.'s treatment, Respondent also failed to offer appropriate psychiatric treatment to J.M. This failure constitutes an extreme departure from the standard of care. Specifically, because Respondent failed to incorporate J.M.'s addiction issues into his evaluation of J.M., the treatments Respondent provided to J.M. were dangerous. For example, for years, Respondent prescribed multiple benzodiazepines to J.M. Benzodiazepines are addictive and inherently subject to abuse. Respondent also prescribed J.M. Adderall, a potentially addictive stimulant that is contraindicated for a patient with bipolar disorder, as it can cause mania. Finally, Respondent also prescribed J.M. Subutex, a substitute for opioid addiction. When prescribing an opiate substitute, urine drug screens should be conducted to ensure that the patient is compliant with the Subutex and not also using other opiates.

23. During the course of J.M.'s treatment, Respondent also failed to maintain accurate and complete psychiatric records for Patient J.M., a simple departure from the standard of care. Specially, Respondent's rationale for choosing the medications he prescribed to J.M. and his reasons for changing Patient J.M.'s medications are not adequately documented in J.M.'s chart.

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Patient D.C.

24. Patient D.C. was a long-term female patient of Respondent. Respondent treated her from at least 2002 and through 2015. At the time, D.C. was 49 years old and had a history of psychiatric hospitalizations.

25. During the course of D.C.'s treatment with Respondent, he prescribed numerous controlled substances to her, including, Phentermine (a weight loss amphetamine), Tegretol (an anticonvulsant), Mellaril (an antipsychotic), Tramadol (a narcotic-like pain medication), Prozac (an antidepressant), and Restoril (a hypnotic sleep aid).

26. Throughout her care, Respondent documented a number of her psychiatric symptoms (including, hearing voices, rapid speech, delusional thoughts and psychosis) but at no time did Respondent document an, assessment, diagnosis or treatment plan for D.C.

27. Respondent's care and treatment of Patient D.C. constitutes an extreme departure from the standard of care in that he failed to maintain accurate and complete psychiatric records for the patient. Specifically, no assessment, diagnosis or treatment plan was present in Respondent's records.

28. Respondent's acts and/or omissions as set forth in paragraphs 8 through 27, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (b), of the Code. As such, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts – Patients J.M., D.C. & J.A.)

29. Respondent is subject to disciplinary action under Code section 2234, subdivisions (a) and (c), in that he committed repeated negligent acts in his care and treatment of patients J.M., D.C. and J.A. The circumstances are as follows:

30. The allegations of the First Cause for Discipline are incorporated by reference as if set forth fully herein.

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Patient J.A.

31. Patient J.A. was a 32-year-old male when he first presented to Respondent in September 2008 at his outpatient clinic in Culver City, California. Respondent diagnosed J.A. with panic disorder and obsessive compulsive disorder (OCD). At the time he presented, J.A. was being prescribed Remeron (an antidepressant) and Ativan (a benzodiazepine). Respondent continued him on these medications and also added a prescription for Pristiq (an antidepressant).

32. During the course of his treatment, Respondent prescribed numerous controlled substances to J.A., including Remeron, Ativan, Pristiq, Celexa (an antidepressant), Ambien, Neurontin (an anti-epileptic medication), Luvox (an antidepressant), Restoril (a benzodiazepine), Valium (a benzodiazepine) and Xanax (a benzodiazepine).

33. While being treated by Respondent, J.A. reported that he was also being treated at Kaiser.

34. In an August 22, 2013 note, Respondent stated: "Patient is instructed to find alternative care. Do not provide anymore refills." The note does not state why J.A. was instructed to find alternative care. Respondent continued to prescribe medication to J.A. through 2017.

35. Respondent admits that he did not fully trust J.A., and did once question J.A.'s frequent medication requests. During a visit on March 3, 2010, and then again on a subsequent visit on June 9, 2010, Patient J.A. informed Respondent that his medications had been lost or destroyed. At no time, however, did Respondent run a CURES (Controlled Substance Utilization Review and Evaluation System) Report to determine whether J.A. was obtaining medications from other providers.

36. Additionally, on multiple occasions, Respondent received information from pharmacies and from Patient J.A. himself indicating that J.A. may be addicted to prescription medications. On August 14, 2012, J.A. reported to Respondent that he had been having more panic attacks, anxiety and feelings of depression, and had gone to the emergency room. J.A. specifically mentioned that the pharmacist did not want to give him more medication. On June 5, 2014, a pharmacy contacted Respondent to let him know that J.A. was going from one pharmacy

to another getting refills of Ativan. On September 6, 2016, Respondent called in a prescription to Walgreen's and learned that J.A. was not using insurance and was paying cash for his medications. Despite these warning signs that J.A. could be a drug seeker, however, Respondent continued to prescribe scheduled medications to him.

37. During the course of Respondent's treatment of J.A., Respondent failed to maintain accurate and complete psychiatric records for J.A. For example, Respondent admitted that he could not recall, even when reading his own notes, why he wrote on August 22, 2013 that he would no longer prescribe refills to Patient J.A., but then subsequently did prescribe refills to J.A. This constitutes a simple departure from the standard of care.

38. Commencing in 2014, it has been part of the standard of care when controlled medications are dispensed to review a patient's CURES Report to ensure that the patient is not drug seeking. During his prospective psychiatric evaluations of J.A., Respondent never ran a CURES Report on J.A., despite the fact that he was prescribing him multiple controlled substances. This constitutes a simple departure from the standard of care.

39. During the course of his treatment of J.A., Respondent failed to offer appropriate psychiatric treatment. Specifically, because Respondent never reviewed J.A.'s CURES Report, Respondent did not make the assessment as to whether J.A. was drug-seeking. Additionally, Respondent did not incorporate the information he received from pharmacies regarding the patient going to multiple pharmacies and paying cash for prescriptions, which are signs of addiction to prescription medications. Given that Respondent's assessment of J.A. did not properly take into account addiction potential, his continued prescribing of medications, including benzodiazepines, which have an addiction potential, constitutes a simple departure from the standard of care.

40. Respondent's acts and/or omissions as set forth in paragraphs 30 through 39, above, whether proven individually, jointly, or in any combination thereof, constitute repeated negligent acts pursuant to section 2234, subdivision (c), of the Code. As such, cause for discipline exists.

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THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records - Patients J.M., D.C. & J.A.)

41. Respondent is further subject to disciplinary action under Code sections 2234, subdivision (a) and 2266, in that he failed to maintain adequate and accurate records for patients J.M., D.C. and J.A. The circumstances are as follows:

42. The allegations of the First and Second Causes for Discipline are incorporated by reference as if fully set forth herein.

43. Respondent's acts and/or omissions as set forth in paragraph 42, above, whether proven individually, jointly, or in any combination thereof, constitute the failure to maintain adequate and accurate records pursuant to section 2266 of the Code. As such, cause for discipline exists.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 48816, issued to Respondent;

2. Revoking, suspending or denying approval of Respondent's authority to supervise physician assistants and advanced practice nurses;

3. If placed on probation, ordering him to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: October 25, 2017

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

LA2017605601